

1269

No. 3520

United States
Circuit Court of Appeals
For the Ninth Circuit.

RAINIER BREWING COMPANY, a Corporation,
Plaintiff in Error,
vs.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Western District of Wash-
ington, Northern Division.

FILED
AUG 4 - 1920
F. D. MONCKTON,
CLERK.

United States
Circuit Court of Appeals
For the Ninth Circuit.

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Counsel.

S. J. WETTRICK, Esq., Attorney for Plaintiff in
Error,

805 Arctic Building, Seattle, Washington.

Messrs. CAREY & KERR, Attorneys for Defendant
in Error,

1410 Yeon Building, Portland, Oregon.

C. A. HART, Esq., Attorney for Defendant in Error,

1410 Yeon Building, Portland, Oregon.

[1*]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
Defendant.

Complaint.

Now comes plaintiff and makes this its complaint
against the defendant herein:

I.

Plaintiff is a corporation organized and existing
under and by virtue of the laws of the State of Ore-
gon and engaged in the transportation of persons

*Page-number appearing at foot of page of original certified Transcript
of Record.

and property as a common carrier and in that business operates and operated at the times hereinafter mentioned a line of steamships between San Francisco, California, and Flavel, Oregon. During said time plaintiff joined with carriers by rail between different states of the United States and filed and published tariffs and in other respects conformed to the interstate commerce law of the United States.

II.

Defendant is a corporation organized and existing under the laws of the State of Washington.

III.

On or about the 12th day of May, 1917, the defendant delivered to plaintiff at San Francisco, California, two carloads [2] of bottled beer with instructions to cause said shipments to be transported via its steamship line to Flavel, thence via the line of railway of the Spokane, Portland and Seattle Railway Company to Portland, and thence via the railway of the Northern Pacific Railway Company to Seattle and there to deliver said shipment to American Transfer Company for the purpose of distributing to the individual consignees of the beer included in said shipment. Said two carloads of beer were thereupon transported to Seattle by plaintiff and its connecting carriers by rail hereinabove referred to and were delivered by said Northern Pacific Railway Company to the individual consignee, whose name in each instance appeared upon each package of bottled beer included in said shipment.

IV.

Under and by virtue of the laws of the State of

Washington and of the United States relating to the importation of beer into the State of Washington, the said connecting carriers by rail of plaintiff upon receipt from plaintiff of the two carloads of beer were required to and did segregate said two carloads of beer into individual shipments, each shipment consisting of the package of beer marked and consigned to the individual consignee for whom it was intended; that thereupon said connecting carriers by rail of plaintiff in conformity to the requirements of law transported said two carloads of beer into the State of Washington and to the City of Seattle and there made delivery of said shipments as individual, less than carload shipments.

V.

That plaintiff and its connecting carriers by rail had theretofore duly published their certain tariffs and had filed the same with the Interstate Commerce Commission of the United States and had duly posted the same in all respects as required [3] by law, and that according to the said tariffs then and there in effect and uncanceled, the lowest freight rate applicable to the transportation of said two carloads of beer from San Francisco, California, to Seattle, Washington, via the said route was the sum of forty-eight cents per hundred pounds minimum of seventy-six cents on each individual shipment, and the total charge which plaintiff and its connecting carriers by rail were required by said tariffs to collect for the transportation of said two carloads of beer from San Francisco, California, to Seattle, Washington, was the sum of \$2,041.54. Defend-

ant has actually paid on account of the charges for said transportation the sum of \$425.57, and no more, and there is still due and owing from defendant the sum of \$1,615.97, in order to complete the payment for said transportation required by the tariffs. Defendant at the time of making said shipment agreed to pay and undertook to pay all of the freight charges lawfully accruing for said transportation, but has paid no more than the sum of \$425.57 on account thereof. No part of the balance due has been paid to plaintiff or to either of its connecting carriers by rail participating in said transportation.

VI.

Prior to the making of said shipment plaintiff had entered into an agreement with its connecting carriers by rail hereinabove named, by which it agreed to advance and pursuant to which it did advance to said connecting carriers by rail their respective charges for the portion of the transportation furnished by each of them, respectively, and by which each of said companies authorized plaintiff to collect from defendant the regular tariff charge for the entire transportation from San Francisco, California, to Seattle, Washington. Demand has been made by plaintiff on defendant for the payment of said balance and defendant has failed and refused and still fails and refuses to pay any part thereof, and the same is now due and owing [4] from defendant to plaintiff.

WHEREFORE, plaintiff prays for judgment against defendant for the sum of \$1,615.97, with interest thereon from the time of the delivery of said

beer at Seattle, Washington, to wit, the 23d day of May, 1917, and with costs and its disbursements herein.

CAREY & KERR,
F. G. DORETY and
CHARLES A. HART,
Attorneys for Plaintiff. [5]

State of Oregon,
County of Multnomah,—ss.

I, W. Q. Davidson, being first duly sworn, depose and say that I am Secretary of Great Northern Pacific Steamship Company, plaintiff in the above-entitled action; that I have read the foregoing complaint, know the contents thereof, and that the same is true as I verily believe.

W. G. DAVIDSON.

Subscribed and sworn to before me this 31 day of July, 1917.

[Seal]

M. BARGER,
Notary Public for Oregon.

My commission expires Oct. 5, 1920.

[Indorsed]: Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Aug. 3, 1917. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [6]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
L. HEMRICH, President,

Defendant.

Answer and Counterclaim.

Now comes the defendant above named, and for
answer to the complaint herein, says:

I.

That it admits the allegations contained in para-
graph I thereof.

II.

That it admits the allegations contained in para-
graph II thereof.

III.

That it admits the allegations contained in para-
graph III thereof, except that delivery of the car-
loads of beer therein referred to was made as therein
alleged, as to which defendant has no knowledge or
information sufficient to form a belief, but alleges
that, if delivery was so made, the same was done
contrary to the provisions of the bill of lading under
which said shipments moved.

IV.

Answering paragraph IV of said complaint, defendant denies each and every allegation therein contained, and alleges [7] that, if said carloads of beer were segregated and delivered as individual, less than carload shipments, as therein alleged, the same was done contrary to the provisions, requirements and agreements of the bill of lading under which said shipments were accepted for transportation and delivery and in misconception of the carriers' rights, duties and obligations in the matter.

V.

Answering paragraph V of said Complaint, defendant denies that the lowest freight rate applicable to the transportation of said two carloads of beer from San Francisco, California, to Seattle, Washington, via the said route, was the sum of 48 cents per hundred pounds with a minimum of 76 cents on each individual shipment, and that the total charge which plaintiff and its connecting carriers by rail were required by their tariffs to collect for said transportation was the sum of \$2,041.54, or any other sum in excess of the sum of \$425.57, which defendant paid upon the delivery of said shipments to plaintiff at San Francisco and which plaintiff then accepted as the total freight charges lawfully accruing on said shipments.

VI.

Answering paragraph VI of said complaint, this defendant alleges that it has no knowledge or information sufficient to form a belief as to the allegations therein contained, and therefore denies the same.

Further answering and by way of an affirmative defense, this defendant alleges :

I.

That on the 8th day of May, 1917, and again on the 12 day of May, 1917, defendant delivered to plaintiff at San Francisco, [8] California, a carload of bottled beer to be transported over the steamship line of plaintiff to Flavel, Oregon, thence over the Spokane, Portland & Seattle Railway to Portland, Oregon, and thence over the Northern Pacific Railway to Seattle, Washington, as through carload shipments; that the two carloads of beer so delivered to plaintiff were duly accepted and a bill of lading issued for each one of them, and that plaintiff thereupon undertook and agreed on behalf of itself and its connecting carriers aforesaid to transport the said carloads of beer to Seattle, Washington, and there to deliver to the American Transfer Company as the consignee named in said bills of lading.

II.

That the tariffs of plaintiff and the said connecting carriers, duly published and on file with the Interstate Commerce Commission, provided different rates for beer transported in carload and less than carload quantities; that the carload rate so published were applicable to shipments over a certain minimum weight per car, and that each one of the shipments in question exceeded the said minimum and was therefore entitled to the carload rate; that the carload rate on bottled beer at the time the said shipments moved, duly published and filed by said carriers as aforesaid, from San Francisco,

California, to Seattle, Washington, was 30 cents per one hundred pounds; that defendant, upon the delivery of the said carloads to plaintiff, paid to plaintiff freight charges on said shipments on the basis of the said carload rate of 30 cents per one hundred pounds, aggregating with certain toll charges added thereto the sum of \$425.57, and that in consideration thereof the said plaintiff, on its own behalf [9] and on behalf of the said connecting carriers, undertook and agreed to transport said two carloads of beer to Seattle, Washington, as prepaid shipments, and there deliver the same to the American Transfer Company, without any further charge whatsoever.

III.

That said shipments consisted of numerous individual cases or packages of bottled beer, each of which bore a permit as required by the laws of the State of Washington and none of which contained more than the amount of beer authorized under the laws of the State of Washington to be transported under such a permit, and that the shipment of said packages in the aggregate as carload lots was not in violation of the laws of the State of Washington or of the United States.

For further answer and defense to plaintiff's complaint and as a counterclaim against plaintiff, this defendant alleges:

I.

That plaintiff and said connecting carriers unreasonably and negligently delayed the transportation of said carloads of beer, which caused great dissatisfaction among defendant's customers to whom

said beer was to be distributed and made it necessary for defendant to send out numerous printed notices and circulars, telegrams and letters, and entailed considerable extra correspondence and office labor, and that the expense incurred and damages suffered by defendant on account thereof was the sum of \$93.40.

WHEREFORE, defendant prays that the complaint of plaintiff be dismissed and that it take nothing by this action; and that defendant have and recover from plaintiff the sum of \$93.40 and its reasonable costs and disbursements herein incurred.

S. J. WETTRICK,
Attorney for Defendant. [10]

State of Washington,
County of King,—ss.

Charles W. Loomis, being first duly sworn, upon his oath deposes and says: That he is the Secretary of defendant herein and makes this verification for and on behalf of said corporation, being thereunto duly authorized; that he has read the foregoing answer and cross-complaint, knows the contents thereof and believes the same to be true.

CHAS. W. LOOMIS.

Subscribed and sworn to before me this 15th day of September, 1917.

[Seal] S. J. WETTRICK
Notary Public in and for the State of Washington,
Residing at Seattle.

[Indorsed]: Answer and Counterclaim. Filed in the U. S. District Court, Western Dist. of Washing-

Great Northern Pacific Steamship Company. 11
ton, Northern Division. Sept. 18, 1917. Frank L.
Crosby, Clerk. By Ed. M. Lakin, Deputy. [11]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
Defendant.

Reply.

Now comes plaintiff and makes this its reply to the
answer and counterclaim of the defendant herein.

Plaintiff admits the making of the shipments of
beer described in paragraph I of defendant's affirma-
tive answer, and admits that said shipments were
made as carload shipments; and defendant admits
that the rate applicable to carload shipments was as
stated in paragraph II of said affirmative answer.
Defendant also admits that said shipments consisted
of individual cases or packages of bottled beer, each
of which bore a permit as required by the law of
the State of Washington, and that none of said in-
dividual packages contained more than the amount
of beer authorized under the laws of the State of
Washington to be transported under such a permit;
but plaintiff alleges that the shipments of such in-

dividual packages in the aggregate as carload lots was in violation of the laws of the State of Washington and of the United States. [12]

Except as herein admitted, plaintiff denies each and every allegation of defendant's affirmative answer.

For its answer to defendant's counterclaim herein, plaintiff denies each and every allegation thereof.

WHEREFORE plaintiff demands judgment as prayed for in its complaint.

CAREY & KERR,
F. G. DORETY and
CHARLES A. HART,
Attorneys for Plaintiff,

State of Oregon,
County of Multnomah,—ss.

I, E. Pearson, being first duly sworn, depose and say that I am Assistant Secretary of Great Northern Pacific Steamship Company, plaintiff in the above-entitled action; that I have read the foregoing reply, know the contents thereof, and that the same is true as I verily believe.

E. PEARSON.

Subscribed and sworn to before me this 5th day of October, 1917.

[Seal]

G. C. FRISBIE,
Notary Public for Oregon.

My commission expires Aug. 4, 1920.

[Endorsed]: Reply filed in U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 19, 1917. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [13]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
Defendant.

Stipulation of Facts.

The parties agree that the following may be taken as the facts in this case, and upon this agreed statement of facts decision of the Court may be made.

I.

The plaintiff is a corporation organized under the laws of the State of Oregon, engaged at the time stated below in the transportation of property as a common carrier by water between San Francisco, California, and Flavel, Oregon. During said times through arrangements with Spokane, Portland and Seattle Railway Company and Northern Pacific Railway Company, under the interstate commerce laws of the United States, plaintiff accepted property at San Francisco for transportation via its water line and via said rail lines to Seattle, Washington.

II.

The defendant is a corporation organized and existing under the laws of the State of Washington.

In May, 1917, defendant Brewing Company delivered to plaintiff at San Francisco, two carloads of beer for transportation over the route mentioned to Seattle, where they were to be delivered to the American Transfer Company, which was [14] the consignee named in the bills of lading. Said shipments were accepted by the Steamship Company and shipped from San Francisco as two carload shipments, bills of lading issued accordingly and freight charges prepaid on the basis of the carload rates in the sum of \$425.57.

III.

Said shipments so made by defendant consisted of numerous cases or packages of bottled beer, each of which bore a permit as required by the laws of the State of Washington, and each of which was marked in such a manner as fully to comply with the laws of the State of Washington and also the laws of the United States relating to the interstate transportation of intoxicating liquors. Each package in said shipment contained no more than the amount of beer authorized under the laws of the State of Washington to be transported under such a permit. The American Transfer Company, consignee of said shipment, was a corporation operating vehicles for the drayage and transportation of goods in and about the City of Seattle, and the shipments were consigned to it for the purpose of enabling it to distribute the different packages making up said shipment to the individuals whose names appeared on the permits.

IV.

Plaintiff Steamship Company transported the two shipments of beer on one of its steamers to Flavel, at which place they were transferred to freight-cars for transportation over the Spokane, Portland and Seattle Railway to Portland, Oregon, where the shipments were to be delivered to the Northern Pacific Railway Company for transportation to Seattle. At and prior to the time of the shipment Spokane, Portland and Seattle Railway Company was operating a special freight service in connection with the [15] steamship line of the plaintiff Steamship Company, and less than carload shipments were commonly loaded into merchandise cars at Flavel and handled in bulk until arrival at Portland or at some other point at which distribution could be begun. Defendant's two shipments were placed in merchandise cars of this kind for transportation to Portland, at which place they were to be delivered to the Northern Pacific Company for transportation to destination. Thereafter and prior to the delivery of said shipments to the Northern Pacific Railway Company at Portland, the latter company refused to accept said shipments as carload shipments, being of the opinion that under the laws of the State of Washington, the beer could not be transported into Washington in carload lots, and said Spokane, Portland and Seattle Company, being also of the opinion that the shipments could not be so transported into Washington as carload shipments, rebilled the two carload shipments at Portland and segregated them into individual less than carload shipments, each pack-

age constituting one shipment, and delivered the shipments in that manner to the Northern Pacific Railway Company, which company transported the same under said rebilling to Seattle where delivery of the individual packages was made to the persons whose names appeared on the permits attached thereto, or upon their order. No claims for any additional charges were made upon the different individuals when the packages were delivered.

V.

One of the cars contained 1,109 packages, weighing 60,891 pounds, and the other 1,456 packages, weighing 79,798 pounds, the weight of each car exceeding the carload minimum named in the tariff. The rates applicable to the shipments were on file with the Interstate Commerce Commission and were combination rates based upon Portland. The through carload [16] rate from San Francisco to Portland was 15¢ per hundred lbs., and from Portland to Seattle 15¢, making the combination carload rate 30¢ per 100 lbs., which is the rate paid on said shipments.

The through less than carload rate from San Francisco to Portland was 25¢ per 100 lbs., with a minimum of 50¢ on a single shipment, and from Portland to Seattle 23¢ with a minimum of 25¢ for a single shipment. If the said shipments could not lawfully have been transported into the State of Washington as carload shipments and delivery made to the Transfer Company and plaintiff is entitled to charge the less than carload rates for the entire transportation of said shipments, the total charges due plaintiff and its connecting carriers are \$1,927.27 and

plaintiff is entitled to recover the difference between the sum and the charges based on the carload rates of \$425.57 paid at the time of delivery to plaintiff, or the sum of \$1,501.70.

VI.

Prior to the making of said shipment plaintiff had entered into an agreement with its connecting carriers by rail hereinabove named, by which it agreed to advance and pursuant to which it did advance to said connecting carriers by rail their respective charges for the portion of the transportation furnished by each of them, respectively, and by which each of said companies authorized plaintiff to collect from defendant the regular tariff charge for the entire transportation from San Francisco, California, to Seattle, Washington.

Dated March 22, 1920.

CAREY & KERR,
C. A. HART,
Attorneys for Plaintiff,
S. J. WETTRICK,
Attorney for Defendant.

[Indorsed]: Stipulation of Facts. Filed in the United States *Dist. of* Washington, Northern Division. June 7, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [17]

In the District Court of the United States for
the Western District of Washington, Northern
Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
Defendant.

Judgment.

The above-entitled action came on for trial June 7, 1920, plaintiff appearing by its attorney, Charles A. Hart, and defendant appearing by its attorney, S. J. Wettrick, and it appearing to the Court that an agreed statement of all of the facts in this case duly signed by the parties had theretofore been filed and that the parties had stipulated that the case may be submitted and decided by the Court upon the said agreed statement of facts, and that a jury had been duly waived by said parties; and the Court having concluded as a matter of law from said statement of facts that plaintiff is entitled to judgment, it is now

ORDERED AND ADJUDGED that plaintiff have judgment against the defendant for the sum of fifteen hundred one and 70/100 (\$1501.70) dollars with interest from June 7, 1920, together with the sum of \$100.65 costs heretofore taxed in favor of plaintiff and against defendant in the Circuit Court

of Appeals for the Ninth Circuit, as appears from the mandate heretofore entered in this action, and with the sum of \$20.45 costs and disbursements duly taxed and allowed in this court.

DONE in open court this 18th day of June, 1920.

EDWARD E. CUSHMAN,
District Judge.

[Indorsed]: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

In the District Court of the United States for the
Western District of Washington.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,
Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corpora-
tion,
Defendant.

Petition for Writ of Error.

The Rainier Brewing Company, defendant above named, respectfully shows:

That on June 18, 1920, a final judgment was entered in the above-entitled cause against defendant and in favor of plaintiff, and said defendant feeling itself aggrieved by said judgment now peti-

tions this court for an order allowing said defendant to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided for the correction of errors so complained of and herewith assigned, and that an order be made fixing the amount of the bond which the defendant shall give and furnish upon said writ of error.

S. J. WETTRICK,
Attorney for Defendant.

[Indorsed]: Petition for Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [19]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,
Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
Defendant.

Assignment of Error and Prayer for Reversal.

Now comes the above-named defendant, Rainier

Brewing Company, and says that in the record and proceedings of the above-entitled cause and in the rendition of judgment therein manifest error has been committed to the prejudice of said defendant in this:

That the learned Court erred—

1. In concluding as a matter of law from the statement of facts upon which this cause was submitted for decision that plaintiff is entitled to judgment and in granting and entering judgment in favor of plaintiff and against defendant.

2. In failing to enter judgment of dismissal of this action and for costs and disbursements in favor of defendant and against plaintiff.

WHEREFORE, defendant prays that the said judgment be reversed and an order entered dismissing said action, with costs to the defendant.

S. J. WETTRICK,
Attorney for Defendant.

[Indorsed]: Assignment of Error and Prayer for Reversal. Filed in the United States District Court, Western District of Washington, Northern Division, June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [20]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
tion,

Defendant.

Order Allowing Writ of Error and Fixing Bond.

Upon motion of S. J. Wettrick, attorney for defendant, Rainier Brewing Company, in the above-entitled cause, upon the filing of petition on writ of error and assignments of error;

IT IS HEREBY ORDERED that a writ of error as prayed for in said petition be allowed and that the amount of the bond to be given by defendant, Rainier Brewing Company, upon said writ of error be and the same is hereby fixed at the sum of seventeen hundred fifty (\$1750.00) dollars.

Dated this 18th day of June, 1920.

EDWARD E. CUSHMAN,

District Judge.

[Indorsed]: Order Allowing Writ of Error and Fixing Bond. Filed in the United States District Court, Western District of Washington, Northern Division. June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corpora-
tion,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That the undersigned, Rainier Brewing Company, a
corporation, as principal, and the United States
Fidelity and Guaranty Company, a corporation, duly
organized under the laws of the State of Maryland,
as surety, are held and firmly bound unto the plain-
tiff in the above-entitled cause for the sum of Seven-
teen Hundred Fifty (\$1750.00) Dollars, for the pay-
ment of which well and truly to be made the under-
signed bind themselves, and each of them, jointly and
severally, and their successors, representatives and
assigns respectively, firmly by these presents.

SEALED with our seals and dated this 18th day of
June, 1920.

WHEREAS, the above-named defendant, Rainier
Brewing Company, has sued out a writ of error in
the United States Circuit Court of Appeals for the

Ninth Circuit to reverse the judgment entered in the above-entitled action,—

NOW, THEREFORE, the condition of this obligation is such that if the above-named Rainier Brewing Company shall prosecute said writ of error to effect and answer all damages and costs if it shall fail to make good said plea, then this obligation shall be void; otherwise to remain in full force and effect.

[Seal] RAINIER BREWING COMPANY,
 By W. G. COLLINS,
 Vice-Pres.
 P. F. GLASER,
 Secretary.

UNITED STATES FIDELITY AND GUAR-
 ANTY CO.

By C. H. CAMPBELL,
 Attorney in Fact. [22]

The foregoing bond is hereby approved this 18th day of June, 1920.

EDWARD E. CUSHMAN,
 District Judge.

[Indorsed]: Bond on Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.
 [23]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
tion,

Defendant.

**Praecipe for Preparation of Transcript of Record
Upon Writ of Error.**

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in this cause for the purpose of transmission to the United States Circuit Court of Appeals for the Ninth Circuit with the writ of error in this cause, said transcript of the record to consist of the following:

1. Complaint.
2. Answer and counterclaim.
3. Reply.
4. Stipulation of facts (agreed statement of facts).
5. Judgment.
6. Petition for writ of error.
7. Assignment of error and prayer for reversal.
8. Order Allowing writ of error and fixing bond.
9. Bond on writ of error.
10. Writ of error.

11. Citation on writ of error.
12. Acceptance of service.

We waive the provisions of the act approved February 13, 1911, and request that you forward type-written transcript to the Circuit Court of Appeals for the Ninth Circuit for printing as provided under Rule 105 of this court.

S. J. WETTRICK,
Attorney for Defendant. [24]

[Indorsed]: Praecipe for Preparation of Transcript of Record of *Record* upon Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. June 23, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [25]

United States District Court, Western District of
Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corpora-
tion,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten transcript of record consisting of pages numbered from 1 to 25, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to said writ of error herein from the judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [26]

Clerk's Fee (Sec. 28 R. S. U. S.) for making record, certificate or return, 50 folios at 15¢.....	\$7.50
Certificate of clerk to transcript of record—4 folios at 15¢....	.60
Seal to said certificate.....	.20

I hereby certify that the above cost for preparing and certifying record amounting to \$8.30 has been paid to me by counsel for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause, together with original acceptance of service.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 8th day of July, 1920.

[Seal]

F. M. HARSHBERGER,
Clerk U. S. District Court. [27]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
tion,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America to
the Honorable, the Judge of the District Court
of the United States for the Western District
of Washington, Northern Division, GREET-
ING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court before you between Great Northern Pacific Steamship Company, plaintiff, and Rainier Brewing Company, defendant, a manifest error hath happened to the great damage of the said defendant, Rainier Brewing Company, as by its complaint appears;

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at the city of San Francisco, in the State of California, within thirty (30) days from the date hereof, in the said Circuit Court of Appeals to be then [28] and there held, to the end that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of June, in the year of our Lord one

thousand nine hundred and twenty.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court for the
Western District of Washington, Northern
Division.

The foregoing writ is hereby allowed.

EDWARD E. CUSHMAN,
District Judge. [29]

[Endorsed]: No. 3713. In the District Court of the United States, for the Western District of Washington, Northern Division. Great Northern Pacific Steamship Company, a Corporation, Plaintiff, vs. Rainier Brewing Company, a Corporation, Defendant. Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [30]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
tion,

Defendant.

Citation on Writ of Error.

United States of America,
District of Washington,—ss.

To Great Northern Pacific Steamship Company, a
Corporation, GREETING:

WHEREAS, Rainier Brewing Company has petitioned for and an order has been made allowing a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment rendered in the above-entitled court in your favor and has given the security required by law and the order of this Court;

You are hereby cited and admonished to be and appear before the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty (30) days from the date hereof, to show cause, if any there be, why the errors complained of in said judgment should not be corrected and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand at Seattle, in said District, this 18th day of June, 1920.

[Seal]

EDWARD E. CUSHMAN,
Judge. [31]

[Endorsed]: No. 3713. In the District Court of the United States, for the Western District of Washington, Northern Division. Great Northern Pacific Steamship Company, a Corporation, Plaintiff, vs. Rainier Brewing Company, a Corporation, Defendant. Citation on Writ of Error. Filed in the United States District Court, Western District of

Washington, Northern Division. Jun. 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.
[32]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP
COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,
tion,

Defendant.

Acceptance of Service.

Due service of the petition for writ of error, assignment of error and prayer for reversal, order allowing writ of error and fixing bond, bond on writ of error, writ of error, citation on writ of error and praecipe for preparation of transcript of record in the above-entitled cause is hereby acknowledged by receipt of true copies thereof this 18th day of June, 1920.

CAREY & KERR and
C. A. HART,

Attorneys for Plaintiff. [33]

[Endorsed]: No. 3713. In the District Court of the United States for the Western District of Washington, Northern Division. Great Northern Pacific

Steamship Company, a Corporation, Plaintiff, vs. Rainier Brewing Company, a Corporation, Defendant. Acceptance of Service. Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 23, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

[Endorsed]: No. 3520. United States Circuit Court of Appeals for the Ninth Circuit. Rainier Brewing Company, a Corporation, Plaintiff in Error, vs. Great Northern Pacific Steamship Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed July 12, 1920.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

